

View Instrument Details



Instrument No 12502550.1
Status Registered
Date & Time Lodged 19 December 2022 16:33
Lodged By Wilson, Natalie Louise
Instrument Type Encumbrance



Affected Records of Title	Land District
NA254/234	North Auckland

Annexure Schedule Contains 20 Pages.

Encumbrancer Certifications

I certify that I have the authority to act for the Encumbrancer and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Ronald John MacDonald as Encumbrancer Representative on 19/12/2022 11:13 AM

Encumbrancee Certifications

I certify that I have the authority to act for the Encumbrancee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Nicholas John Wilson as Encumbrancee Representative on 16/12/2022 04:17 PM

*** End of Report ***

Form 18

Encumbrance Instrument

(Section 100 Land Transfer Act 2017)

Record of Title
(unique identifier)

All/part

Area/Description of part

NA254/234

All

Encumbrancer

Robert James Frater (as to a ½ share) and Ella Seymour Frater (as to a ½ share)

Encumbrancee

Auckland Transport

Estate or interest to be encumbered

Insert e.g. fee simple; leasehold in lease no. etc.

Fee Simple

Encumbrance memorandum number

N/A

Nature of security

State whether sum of money, annuity, or rentcharge, and amount

Rent charge of \$1.00 per annum

Operative clause

Delete words in [], as appropriate

The **Encumbrancer** encumbers for the benefit of the **Encumbrancee** the land in the above record of title(s) with the above sum of money, annuity, or rentcharge to be raised and paid in accordance with the terms set out in the ~~[above encumbrance memorandum]~~ [Annexure Schedule(s)] and so as to incorporate in this encumbrance the terms and other provisions set out in the ~~[above encumbrance memorandum]~~ [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Annexure Schedule 1

Encumbrance Instrument

Terms	<i>Continue in additional Annexure Schedule(s), if required</i>
1	Length of term – 999 years from the date of registration of this encumbrance instrument
2	Payment date(s) – 1 June in each year if demanded prior to that date
3	Rate(s) of interest - Nil
4	Event(s) in which the sum, annuity or rent charge becomes payable – If demanded
5	Event(s) in which the sum, annuity or rent charge ceases to be payable – Refer Annexure Schedule 2

Covenants and conditions	<i>Continue in additional Annexure Schedule(s), if required</i>
Refer Annexure Schedule 2	

Modification of statutory provisions	<i>Continue in additional Annexure Schedule(s), if required</i>

Annexure Schedule 2

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Insert instrument type

Encumbrance Instrument

*Continue in additional Annexure Schedule(s), if required***1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this instrument, unless the context indicates otherwise:

Auckland Transport Code of Practice means the Auckland Transport Code of Practice as published on the Auckland Transport website, as may be updated or revised from time to time;

Authorised Work means the two retaining walls constructed within the Road (the approximate location of which are shown in the plan annexed at Schedule 3), having:

- (a) in respect of the northern retaining wall:
 - (i) a length of 10 metres;
 - (ii) a maximum height of 1.9 metres;
 - (iii) a timber barrier and handrail with a height of 1 metre or greater; and
- (b) in respect of the southern retaining wall:
 - (i) a length of 8.2 metres;
 - (ii) a maximum height of 1.5 metres;
 - (iii) a timber barrier and handrail with a height of 1 metre or greater,

as is shown on the plans and specifications lodged by the Encumbrancer with the Encumbrancee (approximate plans of which are annexed in Schedule 4) and its component parts, supporting and ancillary structures and fittings, all of which are deemed to be affixed to and form part of the soil of the road for the purposes of section 316 of the Local Government Act 1974;

Encumbrancee means Auckland Transport established under section 38 of the Local Government (Auckland Council) Act 2009 and its successors;

Encumbrancer means the person named as the Encumbrancer in this instrument and includes the person for the time being registered as owner of the Land but only as long as he or she has an interest in the Land;

Land means the land at 278 Scenic Drive, Titirangi being Lot 6 Deposited Plan 10136, being the Encumbrancer's land comprised in record of title NA254/234 (North Auckland Registry);

Manager means the Encumbrancee's Technical Property Services Manager, or the person or officer with delegated authority to carry out the relevant functions of the Encumbrancee referred to in this encumbrance instrument; and

Practical Completion means that stage in the execution of the Authorised Work when the Authorised Work is complete except for minor omissions and minor defects:

Annexure Schedule 2

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*Insert instrument type***Encumbrance Instrument**

(b) which do not prevent the Authorised Work from being used for its intended purpose; and

(c) rectification of which will not prejudice the convenient use of the Authorised Work; and

Road means Scenic Drive, Titirangi in Auckland and includes every public place, public or private service, culvert, drain, sewer pipe channel, kerb, footway, gate, building, tree, shrub, or other thing lying on, under, over or within its limits.

1.2 Interpretation: In this instrument, unless the context indicates otherwise:

(a) **Defined Expressions:** expressions defined in the main body of this instrument have the defined meaning throughout this instrument, including the background;

(b) **Headings:** clause and other headings are for ease of reference only and will not affect this instrument's interpretation;

(c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;

(d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

(e) **Plural and Singular:** references to the singular include the plural and vice versa;

(f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this instrument. Each such schedule and attachment forms part of this instrument;

(g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

(h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and

(i) **Joint and Several Obligations:** where two or more persons are bound by a provision in this encumbrance that provision will bind those persons jointly and each of them severally.

Annexure Schedule 2

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*Insert instrument type***Encumbrance Instrument****2. BACKGROUND**

The Encumbrancer acknowledges and confirms the matters set out in Schedule 1.

3. COVENANTS

The Encumbrancer covenants with the Encumbrancee to perform the obligations in the Schedule 2.

4. DISCHARGE OR REDEMPTION

4.1 In recognition of the background matters in Schedule 1, the Encumbrancer irrevocably covenants with the Encumbrancee for the Term that, for as long as all the Encumbrancer's covenants are not fully performed:

- (a) the Encumbrancee will have no obligation to discharge this encumbrance instrument under section 97 of the Property Law Act 2007 or otherwise;
- (b) the Encumbrancer will not take any steps whatsoever, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007 to redeem or discharge this encumbrance instrument, or pursuant to section 317 of the Property Law Act 2007 to have this encumbrance instrument revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land;
- (c) the Encumbrancer will not support any such steps being taken by a third party; and
- (d) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this encumbrance instrument discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land.

4.2 To avoid any doubt:

- (a) if the Encumbrancer's covenants are of a restrictive nature, for example by requiring the Encumbrancer not to do something, the performance of those obligations will require the Encumbrancer to observe and comply with those restrictions; and
- (b) where the Encumbrancer's covenants are of a continuing nature, they will be treated as not having been fully performed for as long as they are capable of still being performed, observed or complied with.

5. FIRST CHARGE

5.1 This encumbrance will rank as a first charge in respect of the Land, and

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Encumbrance Instrument

the Encumbrancer will enter into a memorandum of priority with any chargeholder or mortgagee to ensure that state of affairs.

5.2 The Encumbrancee's consent will not be required to the registration of any instrument against the Land which has priority behind this encumbrance instrument.

6. COSTS

The Encumbrancer will pay all legal costs directly or indirectly attributable to the preparation, registration, enforcement and discharge of this encumbrance instrument.

7. IMPLIED TERMS

Sections 203, 204 and 205 of the Property Law Act 2007 apply to this encumbrance instrument but otherwise (and without prejudice to the Encumbrancee;s Encumbrancee's rights of action at common law as a rent chargee or encumbrancee):

7.1 the Encumbrancee is entitled to none of the powers and remedies of encumbrancees by the Land Transfer Act 2017 and the Property Law Act 2007; and
Encumbrancee's rights of action at common law as a rent chargee or encumbrancee):

7.2 the Encumbrancee is entitled to none of the powers and remedies of encumbrancees by the Land Transfer Act 2017 and the Property Law Act 2007; and

7.3 no covenants by the Encumbrancer or their successors in title are implied in this encumbrance instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

Annexure Schedule 2

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Insert instrument type

Encumbrance Instrument

<p>SCHEDULE 1</p> <p>(Background)</p>	
<p>1.</p>	<p>The Encumbrancer is registered as owner of the Land, which is situated in the district of the Encumbrancee.</p>
<p>2.</p>	<p>The Encumbrancer has requested the Encumbrancee to consent to the placing of two retaining walls within the legal road to facilitate access via a driveway to the Land.</p>
<p>3.</p>	<p>The Encumbrancee has agreed to consent to the application on the condition (amongst other things) that the Encumbrancer grants the rent charge and enters into the covenants in this encumbrance instrument.</p>

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*Insert instrument type***Encumbrance Instrument****SCHEDULE 2****(Encumbrancer's Covenants)****1. CONSENT OF THE ENCUMBRANCEE**

The Encumbrancer must, before commencing any work of construction, maintenance or repair of the Authorised Work, obtain consent from the Manager in addition to any other regulatory consents required from the Encumbrancee. The Encumbrancer must include with the application:

- 1.1 engineering design drawings prepared and certified by a chartered professional engineer; and
- 1.2 a programme of works, which must include a site specific health and safety management plan and a traffic management plan.

2. OTHER CONSENTS

2.1 The Encumbrancer must, a reasonable time before commencing any construction, maintenance or repair of the Authorised Work, notify all network utility operators including but not limited to telecommunications, water, wastewater, stormwater, electricity and gas of its intention to construct the Authorised Work on the Road.

2.2 The Encumbrancer must also obtain and fully comply with all other necessary statutory and other consents and the requirements of the following parties:

- (a) all network utility operators, including but not limited to telecommunications, water, wastewater, stormwater, electricity and gas;
- (b) all owners of private property affected;
- (c) all consents which may be required under the Resource Management Act 1991 and the Building Act 2004;
- (d) all consents and other documents required to enable registration of this instrument with Land Information New Zealand as a first charge against the record of title to the Land;
- (e) all consents which may be required in relation to any vehicle crossing, if applicable;
- (f) all engineering approvals; and
- (g) all consents required by Auckland Council.

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*Insert instrument type***Encumbrance Instrument****3. CONDUCT OF WORK**

- 3.1** The Encumbrancee has the ability to manage the Road in an unfettered manner at all times.
- 3.2** The Encumbrancer must comply with the Auckland Transport Code of Practice in force at the time when carrying out any work in the Road. These conditions may be amended by Auckland Transport or Auckland Council at any time.
- 3.3** Any work of construction, maintenance or repair of the Authorised Work must be performed to the standards specified in the New Zealand Building Code and must be supervised by a chartered professional engineer.
- 3.4** The Authorised Work must have a design life of at least 50 years.
- 3.5** The Encumbrancer must comply with the Code of Practice for Utility Operators' Access to Transport Corridors approved by the Minister for Infrastructure under the Utilities Access Act 2010 when it carries out the Authorised Work. This includes lodging a Corridor Access Request via www.myworksites.co.nz before commencing any work of construction, maintenance or repair of the Authorised Work and complying with any additions imposed by the Work Access Permit associated with that Corridor Access Request. These requirements may be amended by the Encumbrancee at any time by notice to the Encumbrancer. If the Encumbrancer proposes changes to the installation methodology or installation depth of the Authorised Work, such changes must be approved by the Corridor Access Request Team Leader.
- 3.6** Before commencing any work in the Road the Encumbrancer must ensure that its contractor has obtained and carries adequate public liability insurance cover (being at least \$2,000,000) to indemnify both the Encumbrancer and the Encumbrancee against public liability. The Encumbrancer must produce to the Encumbrancee reasonable evidence of the existence and currency of that cover if requested by the Encumbrancee.
- 3.7** The Encumbrancer must not, without the prior written consent of the Manager, do anything or allow anything to be done which causes interruption to the passage of vehicular and pedestrian traffic using the Road. All work must be carried out continuously at times reasonably approved by the Manager, and is to be completed as soon as is reasonably possible.
- 3.8** The Encumbrancer must reinstate those parts of the Road which have been affected by the works but are not occupied by the Authorised Work to the Encumbrancee's standard specification immediately after completion of any works. No materials, plant or equipment should be abandoned or left in the Road but must be removed within 28 days of Practical Completion of the Authorised Work or the completion of any other maintenance or repair of the Authorised Work.

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*Insert instrument type***Encumbrance Instrument**

- 3.9** The Encumbrancee may at all reasonable times inspect any construction, maintenance or repair of the Authorised Work. The Encumbrancer will pay all reasonable expenses incurred by the Encumbrancee in supervision or inspection of that construction, maintenance or repair.
- 3.10** The Encumbrancer will on or before 1 June in the fifth year after the date of this encumbrance instrument, and on each fifth anniversary of that date, arrange for an inspection of the Authorised Work by a suitably qualified engineer and provide a report by the engineer in a form satisfactory to the Encumbrancee as to the structural soundness and general state of repair of the Authorised Work. If the Encumbrancer fails to provide this report by the due date the Encumbrancee may arrange for an inspection and report by its own engineer for this purpose, the cost of which will be borne by the Encumbrancer. The Encumbrancer must carry out any works recommended in the report provided by its own or the Encumbrancee's engineer within one month of receiving the report.
- 3.11** The Encumbrancer must pay the cost of any alteration to or interference with power, gas, water, telephone, drainage or other services necessitated by the construction, repair, maintenance or use of the Authorised Work and will make good all damage done by the Encumbrancer to property belonging to or controlled by any person, firm, company, local authority, public body, or Government Department and will pay full compensation to all parties for any loss or damage caused by any interference by the Encumbrancer with that property or with those public services.
- 3.12** The Encumbrancer will be responsible for maintaining the reinstated road surface under clause 3.8 for 12 months following completion of the Authorised Work to the satisfaction of Encumbrancee. The Encumbrancee reserves the right to carry out any remedial work which it considers necessary, on written notice to the Encumbrancer, and to recover the cost of this work from the Encumbrancer, if it fails to maintain the road surface to the required standard.
- 3.13** Within 28 days of Practical Completion of the Authorised Work, the Encumbrancer must provide the Encumbrancee with producer statements from a chartered professional engineer certifying that the construction of the Authorised Work within the Road is sound once the Authorised Work is completed.
- 3.14** The Encumbrancer will immediately notify the Encumbrancee when any construction, maintenance or repair of the Authorised Work is completed so as to enable the Encumbrancee to inspect the Authorised Work and ensure satisfactory completion of any such construction, maintenance or repair (as the case may be).
- 3.15** The Encumbrancer must not install any gates other than on or within the boundary of the Land.

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*Insert instrument type***Encumbrance Instrument****4. MAINTENANCE AND REPAIR**

- 4.1** The Encumbrancer must at all times maintain the Authorised Work and all equipment and fittings connected to it in good order and repair and safe to the satisfaction of the Encumbrancee and keep the plantings and landscaped areas in the Road immediately adjacent to the Authorised Work clean, tidy and free of weeds and graffiti. The Encumbrancer must comply with any notice to repair given to the Encumbrancer by the Encumbrancee and will promptly carry out all repairs and maintenance to the reasonable satisfaction of the Encumbrancee. If the Encumbrancer fails to maintain the Authorised Work and plantings and landscaped areas in that condition the Encumbrancee may on written notice undertake the repairs or maintenance and recover the costs incurred from the Encumbrancer.
- 4.2** Except in cases of emergency, the Encumbrancer must give written notice to the Encumbrancee setting out its intention to carry out any repairs and renewals at least seven days before any work is commenced. The Encumbrancer must supply to the Encumbrancee engineering design plans of all work to be carried out. Subject to clause 4.4, in cases of emergency the Encumbrancer will give the Encumbrancee written notice setting out the nature of the repairs or renewals as soon as possible after the event rendering the urgent repairs or renewals necessary, with appropriate plans.
- 4.3** Notwithstanding any other provision of this encumbrance, in the event of an emergency or where there is an immediate risk of injury or damage to persons or property, the Encumbrancer must, as soon as possible after it becomes aware of the same (and in any event within 72 hours), undertake all work and take all other steps necessary to prevent such injury or damage occurring or continuing.
- 4.4** If the Encumbrancer fails to undertake all work and take the other steps necessary referred to in clause 4.3 within 72 hours of becoming aware of the relevant risk, or if urgent works are required to remove the risk of injury or damage to persons or property and/or to enable the unfettered management of the Road, the Encumbrancee may enter the Land and undertake any such alterations, removal, remedial or repair works to the Authorised Work that it considers necessary, without the requirement to provide the Encumbrancer with prior notice. If the Encumbrancee undertakes any such works in accordance with this clause, the Encumbrancer will meet all costs incurred by the Encumbrancee (including any professional costs incurred in connection with determining the appropriate repair work).

5. ALTERATIONS BY ENCUMBRANCER

If the Encumbrancer wishes to carry out any work not provided for in the plans previously approved by the Encumbrancee the Encumbrancer must obtain the Encumbrancee's written approval. This encumbrance instrument may be varied at the cost of the Encumbrancer to record any such approval and plans showing the

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location of the proposed work in relation to the Authorised Work are to be lodged with the Encumbrancee.

6. ALTERATIONS REQUIRED BY ENCUMBRANCEE: NO PROPRIETARY INTEREST OR COMPENSATION

6.1 If at any time the Authorised Work gives rise to a public or private nuisance or in any way interferes with any other lawful work, or if the Encumbrancee considers removal or alteration necessary for safety, or for widening, realignment or reconstruction of the Road or for any other public work, then the Encumbrancee may on reasonable notice (being at least 15 working days) require the Encumbrancer to raise, lower, remove or otherwise alter the Authorised Work. If the Encumbrancer fails to do so within a reasonable time, the Encumbrancee may carry out the alterations itself at the Encumbrancer's cost.

6.2 The Encumbrancer acknowledges that nothing in this instrument gives the Encumbrancer the right to encroach across the road frontage of any neighbouring property. If the Encumbrancee at any time is of the view that such an encroachment exists or has occurred, it may require the Encumbrancer at the Encumbrancer's cost to alter or remove the Authorised Work in such a way as to remove the encroachment.

6.3 Neither the consent given by the Encumbrancee for the construction of the Authorised Work, nor any provision of this instrument, will be deemed to give the Encumbrancer any proprietary interest or other right, or give any expectation to the Encumbrancer as to the continued existence of the Authorised Work, nor will that consent or anything else in this encumbrance prevent or limit the Encumbrancee from dealing with the Authorised Work, being part of the legal road, in any manner which it is lawfully empowered to do.

6.4 No compensation or damages will be payable to the Encumbrancer if the Encumbrancee requires the Authorised Work to be removed or altered, and the Encumbrancee may on reasonable grounds require that the removal or alteration be carried out at the cost of the Encumbrancer.

7. NON-EXCLUSIVE USE

The Encumbrancer acknowledges that the Encumbrancer's use of the Authorised Work is non-exclusive and the Authorised Work can be used by the general public.

8. COMPLIANCE WITH STATUTORY REQUIREMENTS

The Encumbrancer will at its own expense comply with all Acts, by-laws and regulations including requisitions by any competent authority, in respect of the Authorised Work, to the extent that they relate to the Authorised Work and the Encumbrancer's use of it.

9. PROVISION OF AS-BUILT PLANS

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*Insert instrument type***Encumbrance Instrument**

The Encumbrancer will provide "as-built" plans of the Authorised Work to the Encumbrancee and any other authorities or persons as the Encumbrancee directs on completion of the Authorised Work and any subsequent alterations to it. The Encumbrancer must hold a copy of these plans and make them available to the Encumbrancee on request.

10. INDEMNITY

The Encumbrancer will indemnify the Encumbrancee and Auckland Council against all legal liability for actions, proceedings, costs, claims and demands that may be made against the Encumbrancee or Auckland Council for loss or damage caused by or arising out of or in connection with any act or omission of the Encumbrancer, its staff or contractors.

11. INSURANCE

The Encumbrancer must, until the Authorised Work is removed from the Road, at its own expense insure the Encumbrancee and the Encumbrancer against public risk for a reasonable amount as approved by the Encumbrancee, with an insurer approved by the Encumbrancee, which approval is not to be unreasonably withheld.

12. SERVICE OF NOTICES

Any notice to be served by either party on the other may be signed by or on behalf of the party serving such notice by an officer, solicitor or attorney of or for that party and may be given by facsimile or by delivering the same or sending it through the post in a pre-paid registered letter addressed to the party to be served at the registered office or principal place of business of the party to be served. If so posted, the notice will be deemed to have been served on the next working day following the date of posting, and if given by facsimile, the notice will be deemed to have been served on the completion of an error-free transmission, if sent on a working day, or otherwise on the next working day. In this clause the term **working day** means any day other than Saturday or Sunday that banks are usually open for business in Auckland.

13. RATES

The Encumbrancer will pay to Auckland Council all local authority rates or charges levied or assessed on the Authorised Work.

Insert instrument type

Encumbrance Instrument

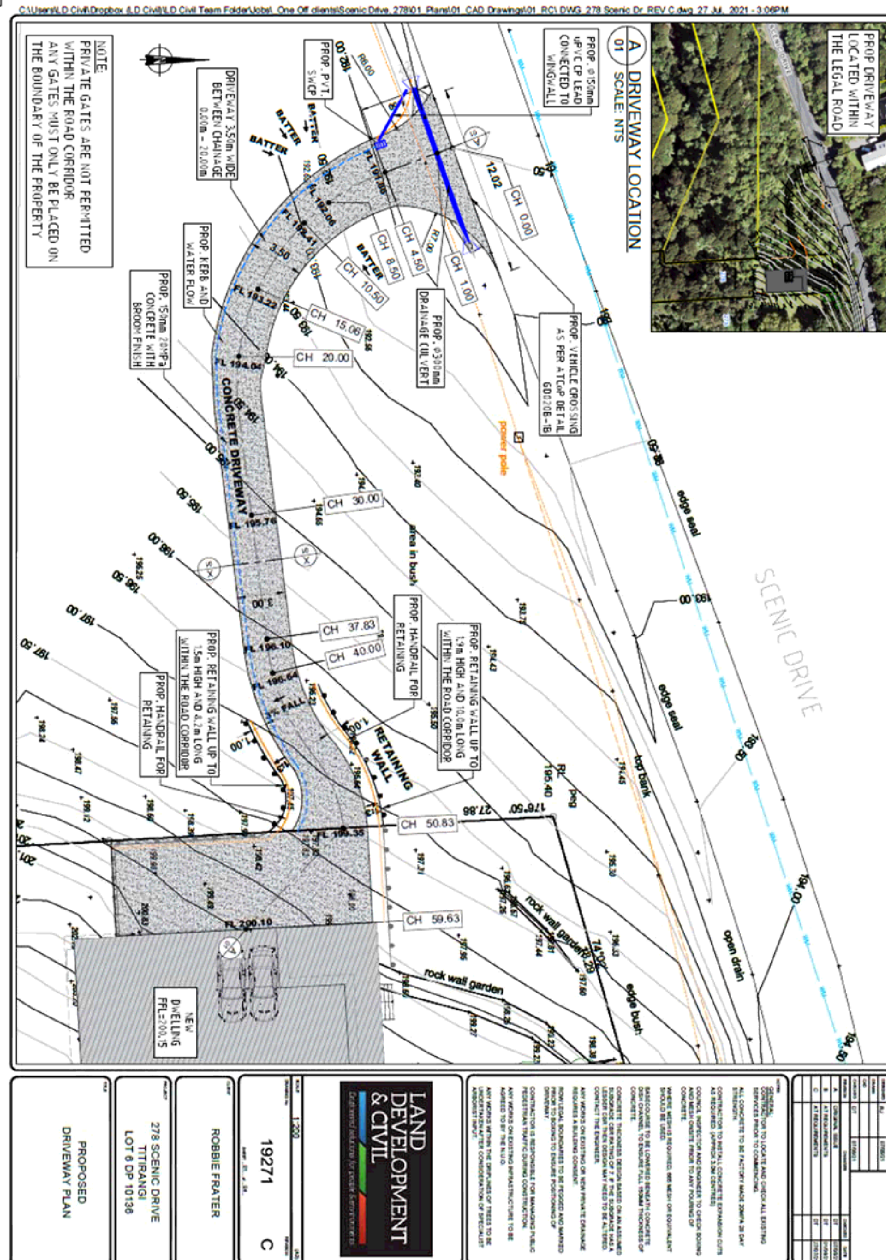
SCHEDULE 3
(Plans showing Location of Authorised Work)



Insert instrument type

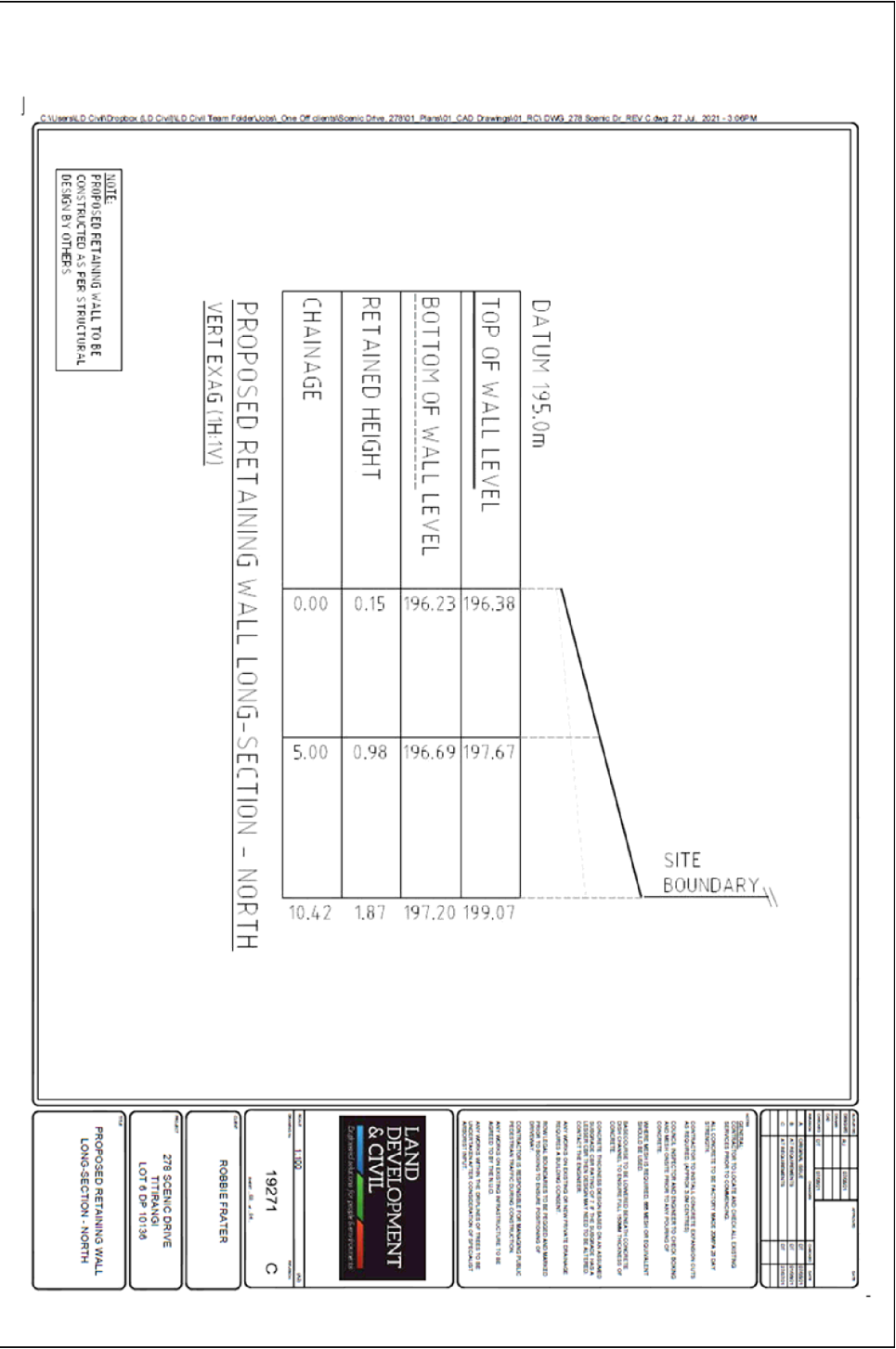
Encumbrance Instrument

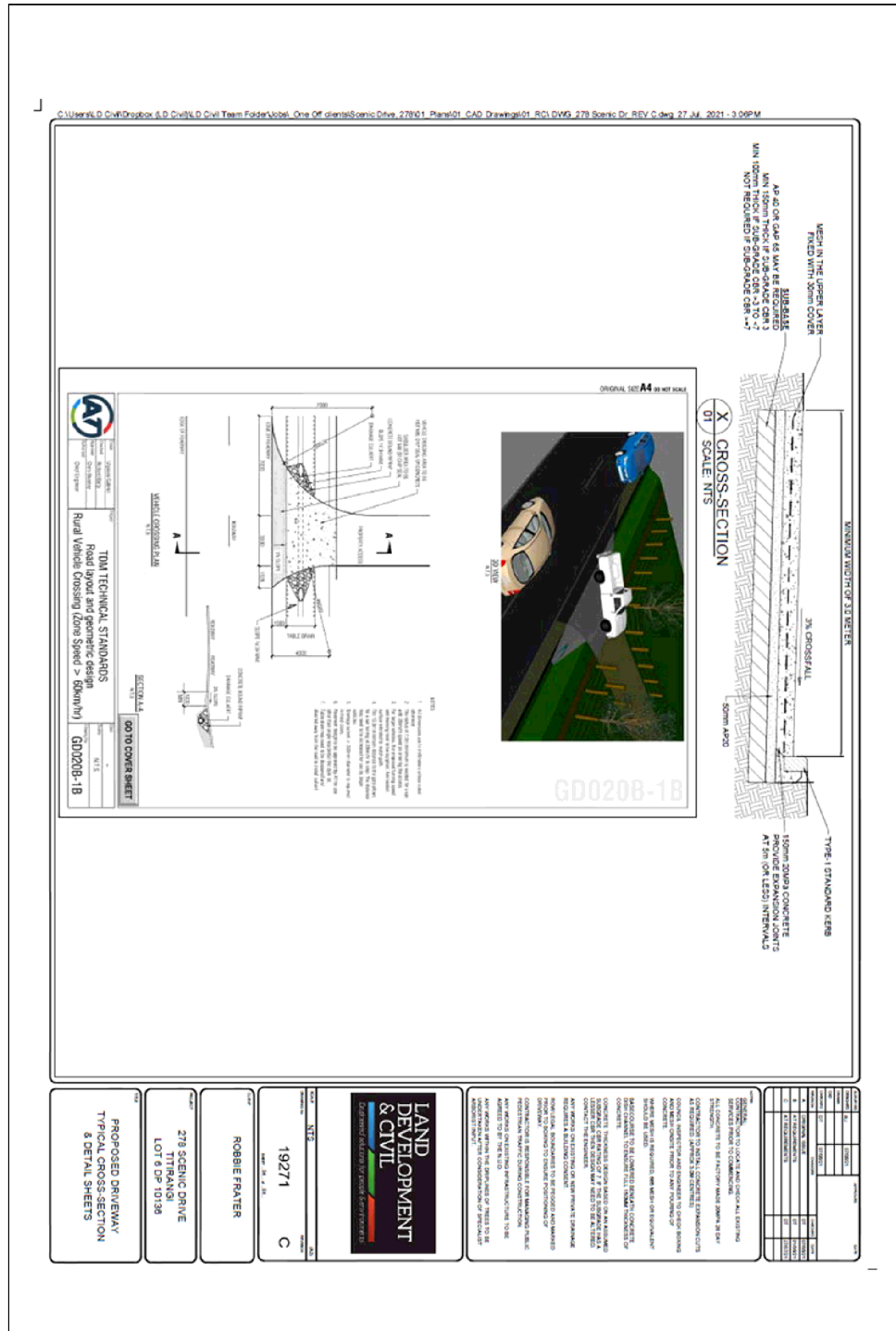
SCHEDULE 4
(Plans showing Specifications of Authorised Work)

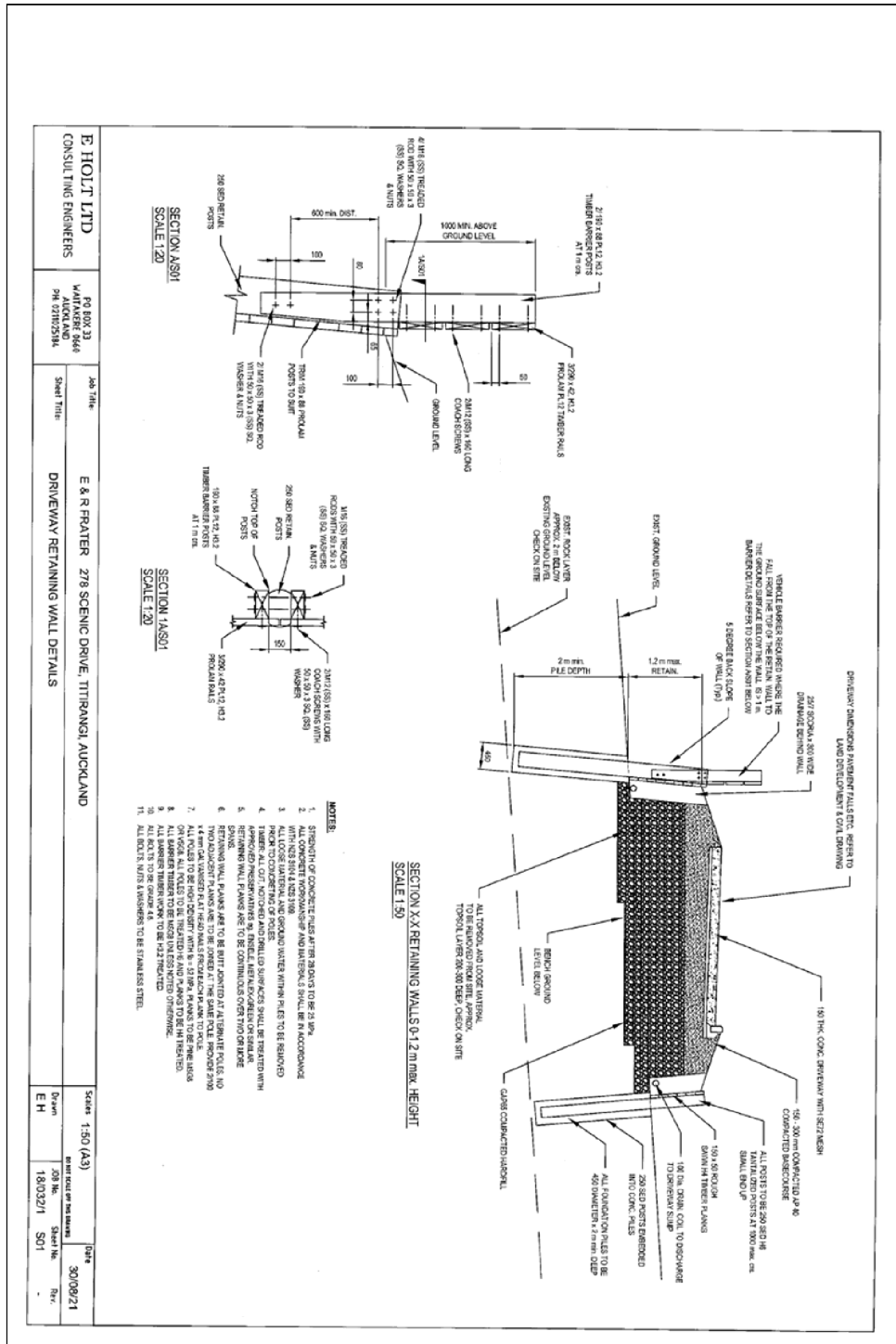


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Encumbrance Instrument



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